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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/082,834      | 02/25/2002  | Timothy W. Exler     | 01-393              | 4641             |

7590 11/28/2003

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| EXAMINER |
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RAMIREZ, RAMON O

| ART UNIT | PAPER NUMBER |
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3632

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/082,834

Applicant(s)

EXLER, TIMOTHY W.

Examiner

RAMON O. RAMIREZ

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-10 and 12-17 is/are rejected.
- 7) ☒ Claim(s) 3,4 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

*Detailed Action*

This is the fourth Office Action corresponding to response filed Oct 30, 2003.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The 112 rejection presented in the former Office Action is in error. Accordingly, the amendment and arguments presented in Applicant's response filed July 25, 2003 are now considered.

*Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 5-9, 12, 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens et al. in view of Chun (Pat No 6,286,798).

The patent to Owens et al. is fully described in former Office Actions.

The patent to Chun shows a drink holder comprising a wrap secured along a container having a magnet (800) securing the wrap to a magnetic surface (please refer to Fig 21).

It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Owens et al. with a magnet as shown by Chun to secure it to a magnetic surface. As to claim 2, the specific type of magnet used is seen as an obvious matter of engineering choice, since several are known and available to those skilled in the art. As to claim 6, the use of coating on the magnet is considered as an

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obvious matter of engineering choice for protecting the magnetic surface from scratches. As to claim 9, the length of the attachment means is also considered as an engineering choice, it is well known that a longer extension would provide for a stronger gripping and degree of adjustability for allowing the use of bigger beverages containers. As to claim 12, the device resulting in the combination of Owens et al. and Chun would be used following the recite method. As to claim 13, the use of indicia has no patentable significance since it will have no effect regarding the structure of the device. It will enhance aesthetics or marketing but no the structure.

Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens et al. in view of Chun and Millis et al.

The patent to Millis et al. is explained in former Office Actions.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the device of the combination set forth above with a bottom section to better secured the container. As to claim 14, to provide the bottom section with a magnet is considered an obvious matter of engineering choice to secure the holder from a horizontal magnetic surface.

#### *Allowable Subject Matter*

Claims 3, 4 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

The present rejection presents analogous art since both Owens et al. and Chun hold containers using a band wrapped along the container. The use of a magnet as taught by Chun is obvious to combine with Owens et al. since the magnet is used to support the wrap on a magnetic supporting surface. This does not preclude at all the propose use of Owens et al.. In other words, a user can still keep the beverage cool or hot while it is secured to a magnetic surface by the magnet.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

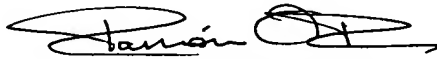
Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner **Ramírez** at telephone number (703) 308-0748.

The examiner can be normally reached on Monday-Thursday and alternate Fridays.

The fax numbers for this Group are (703) 872-9306 (official papers), and (703) 308-3519 (unofficial papers). Our Customer service fax number is (703) 872-9325.

Any inquiry of general nature relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

R.O.RAMIREZ  
November 20, 2003

  
RAMÓN O. RAMIREZ  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600  
ART UNIT 3632